

96TH CONGRESS
1ST SESSION

S. 111

To improve the administrative process by making Federal agencies more responsive to the will of the people as expressed by their elected representatives in Congress.

IN THE SENATE OF THE UNITED STATES

JANUARY 23 (legislative day, JANUARY 15), 1979

Mr. BUMPERS introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To improve the administrative process by making Federal agencies more responsive to the will of the people as expressed by their elected representatives in Congress.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That the portion of Public Law 89-554 (80 Stat. 393), now
4 codified as section 706 of title 5, United States Code, is
5 amended by striking out the first sentence thereof and substi-
6 tuting therefor the following:

7 “To the extent necessary to decision and when present-
8 ed, the reviewing court shall decide de novo all relevant

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1 questions of law, interpret constitutional and statutory provi-
2 sions, and determine the meaning or applicability of the
3 terms of the agency action.¹¹ There shall be no presumption
4 that any rule or regulation of any agency is valid, and when-
5 ever the validity of any such rule or regulation is drawn in
6 question in any court of the United States or of any State,
7 the court shall not uphold the validity of such challenged rule
8 or regulation unless such validity is clearly and convincingly
9 shown; *Provided, however,* That if any rule or regulation is
10 set up as a defense to any criminal prosecution or action for
11 civil penalty, such rule or regulation shall be presumed valid
12 until the party initiating the criminal prosecution or action for
13 civil penalty shall have sustained the burden of proof normal-
14 ly applicable in such actions."

○

5 § 705

Note 20

it, and a stay at such juncture would therefore not expedite resolution of issue as to whether petitioner had a right to intervene in proceedings on such application, and it was within petitioner's power to accelerate court's consideration of its petition for review of order denying it a right to intervene, under such circumstances. Court of appeals would consider right of petitioner for review an adequate remedy, and deny its request for a stay of further proceedings by the Commission. *Virginia Petroleum Jobbers Ass'n v. Federal Power Commission*, 1958, 259 F.2d 921, 104 U.S.App.D.C. 106.

In view of fact a petitioner had an adequate remedy within section 717r of Title 15 for denial of its petition to intervene in proceeding on another local gas company's application to Federal Power Commission for extension of service, and if it had a right to intervene in such proceedings, it had a right to judicial review in the court of appeals of order denying intervention, its petition for an in-

THE AGENCIES GENERALLY

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junction staying proceedings before the Commission pending an appeal from denial of its petition would be denied. *Id.*

21. Jurisdiction

Question as to refusal to stay administrative proceedings pending appeal was not before the court of appeals where plaintiff did not appeal from order denying the stay, notwithstanding that she had asserted in her brief that refusal to stay was error. *Davis v. Secretary, Dept. of Health, Ed. and Welfare, C.A.Md.* 1967, 386 F.2d 429.

Motion by plaintiff administrative body for preliminary injunction prohibiting defendant from violating cease and desist order which defendant was in process of appealing was in the exclusive jurisdiction of court of appeals to hear and decide and district court did not have exclusive or concurrent jurisdiction to hear and decide the motion. *Federal Sav. & Loan Ins. Corp. v. Lawn Sav. & Loan Ass'n, D.C.Hl.* 1968, 285 F.Supp. 793.

§ 706. Scope of review

To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall—

- (1) compel agency action unlawfully withheld or unreasonably delayed; and
- (2) hold unlawful and set aside agency action, findings, and conclusions found to be—
 - (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
 - (B) contrary to constitutional right, power, privilege, or immunity;
 - (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;
 - (D) without observance of procedure required by law;
 - (E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or
 - (F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

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In making the foregoing whole record or those parts shall be taken of the rule. Pub.L. 89-554, Sept. 6, 1966.

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Derivation: United States
5 U.S.C. 100

Standard changes are made with the definitions applicable to the report.

Abbreviation of Record. Pub. Aug. 28, 1958, 72 Stat. 941, which authorized the abbreviation of the review or enforcement of administrative agencies and review original papers, provided, in thereof, that: "This Act [with section 2112 of Title 28, Judicial Procedure, and amendments sections 1036 and 1037(c) of (now sections 2346 and 2347(c) 28), sections 8, 9, 193(c), 194(b), 1115(c), 1599(c), 1600, and 1601 Agriculture, section 1848 of Banks and Banking, sections (d), 771(a), 78y(a), 79x(a), 80a-13(a), and 717r(a), (b) of Title Commerce and Trade, section 8251(c)

Federal Communications Commission 402 of Title 47, Telecommunications

Administrative Law and
§ 741 et seq.

Enforcement and review of decisions et seq.

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JUDICIAL REVIEW

5 § 706

In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

Pub.L. 89-554, Sept. 6, 1966, 80 Stat. 393.

Historical and Revision Notes

Derivation: United States Code
5 U.S.C. 1009(e)

Revised Statutes and Statutes at Large
June 11, 1946, ch. 324, § 10(e), 60 Stat. 243.

Explanatory Notes

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

Abbreviation of Record. Pub.L. 85-791, Aug. 28, 1958, 72 Stat. 941, which authorized the abbreviation of the record on the review or enforcement of orders of administrative agencies and review on the original papers, provided, in section 35 thereof, that: "This Act [which added section 2112 of Title 28, Judiciary and Judicial Procedure, and amended former sections 1036 and 1037(c) of this title (now sections 2346 and 2347(c) of Title 28), sections 8, 9, 193(c), 194(b)-(d), (h), 1115(c), 1599(e), 1600, and 1601 of Title 7, Agriculture, section 1848 of Title 12, Banks and Banking, sections 21, 45(b)-(d), 77i(a), 78y(a), 79x(a), 80a-42(a), 80b-13(a), and 717r(a), (b) of Title 15, Commerce and Trade, section 8251(a), (b) of

Title 16, Conservation, section 81r(c) and 1641(b) of Title 19, Customs Duties, section 277(b) of Title 20, Education, sections 346a(i)(2), (3), 371(f)(1), (3) of Title 21, Food and Drugs, section 1631f(b) of Title 22, Foreign Relations and Intercourse, section 204(h) of Title 27, Intoxicating Liquors, sections 160(d)-(f) and 210(a) of Title 29, Labor, former section 576 (now section 6212(f)) of Title 39, The Postal Service, section 291j(b)(1), (2) of Title 42, Public Health and Welfare, section 315(f) of Title 45, Railroads, section 1181(b) of Title 46, Shipping, section 402(d) of Title 47, Telegraphs, Telephones, and Radiotelegraphs, section 646(c) of Title 49, Transportation, and sections 793(a), 820(e), 821(c), (d) of Title 50, War and National Defense] shall not be construed to repeal or modify any provision of the Administrative Procedure Act."

Cross References

Federal Communications Commission proceedings, applicability of section to, see section 402 of Title 47, Telegraphs, Telephones, and Radiotelegraphs.

Library References

Administrative Law and Procedure
§ 741 et seq.

C.J.S. Public Administrative Bodies and Procedure § 193 et seq.

West's Federal Forms

Enforcement and review of decisions and orders of administrative agencies, see § 851 et seq.

Notes of Decisions

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